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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 1[redacted]39

GULF, MOBILE AND NORTHERN RAILROAD COMPANY, PETITIONER,

vs.

W. F. WELLS.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

ELLIS B. COOPER,
Counsel for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No.

GULF, MOBILE AND NORTHERN RAILROAD COMPANY, PETITIONER,

vs.

W. F. WELLS, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

The petition of the Gulf, Mobile and Northern Railroad for a writ of certiorari directed to the Supreme Court of Mississippi respectfully shows:

1. Respondent, W. F. Wells, filed his declaration against petitioner in the Circuit Court for the Second Judicial District of Jones County, Mississippi, for an alleged injury sustained by him on June 2, 1924, at or near Stratton, Miss. Respondent alleged that petitioner operates a line of railroad from Mobile, Ala-

bama, through Mississippi to a point in Tennessee and was engaged as a common carrier of freight and passengers (R., p. 1). It was further alleged therein that respondent was employed by the petitioner as a brakeman on its local freight trains. The declaration is in three counts. (*a*) The first count alleged that while respondent was engaged in the execution of his duties as brakeman and while boarding a train on June 2, 1924, he stepped upon a lump of coal negligently left by the track, which caused him to stumble and fall, breaking a knee cap and spraining his ankle (R., p. 1). (*b*) The second count, after a repetition of the allegations of the relation of master and servant between petitioner and respondent, alleged that while respondent, in the execution of his duties as a brakeman, was attempting to board the train on which he was working he stepped upon a piece of coal and stumbled and as he stumbled the "engineer on said train gave a very sudden and very unnecessary jerk of said train" and carelessly and negligently jerked respondent from the train, causing the injuries stated in the first count (R., p. 3). (*c*) The third count, after the statement of the preliminary facts, alleged that the train was being operated within the corporate limits of Stratton, Miss., at a speed in excess of six miles per hour, the statutory rate of speed in Mississippi for the operation of a train within the limits of a municipality, and that this speed, together with the lump of coal, occasioned the injury (R., p. 4). Judgment for $10,000 was demanded.

2. To this declaration petitioner, among other pleas, interposed the plea of not guilty, with notice thereunder that it would offer evidence to show that at the time and place of injury petitioner and respondent were engaged in interstate commerce, and that his cause of action, if any, was governed by the Federal Employers' Liability Act (R., p. 6).

3. At the close of respondent's case in chief the trial court directed a verdict for petitioner on the first and third counts. The second count, involving the sudden and unnecessary jerk of the train by the engineer, alone remained for consideration. Upon this count the judgment and all later proceedings are based.

4. On the trial of the cause respondent testified, as the certified copy of the record filed herewith shows, that he was employed by the petitioner as brakeman (R., p. 18); that the crew consisted of an engineer, a fireman, a conductor, a head brakeman, a flagman, and the respondent, who was the swing brakeman (R., p. 20); that the train was a local freight train (R., p. 19). He testified that when they reached the station called Stratton some switching was done in which he participated (R., pp. 20-21); that when this switching was completed he was on the side of the train that the fireman was on; that the train had about ten cars in it; that while standing at or near the caboose, which was at the end of the train, that he signaled the fireman in the locomotive that he was ready to go, meaning that the work at the station had been completed and the train should proceed; that after giving this signal to

the fireman he was directed by the conductor to throw a derail on an adjoining track; that he accomplished this and started back to catch the train; that the train was then in motion and had moved 50 feet; that he was accustomed to catching moving trains; that as he approached the train he had his eyes on the course he was traversing (R., pp. 26-30). In respondent's words, he "throwed the derail and cut straight across to get to the caboose; the train was running not over eight or ten miles per hour when I went to catch the caboose, and this big lump of coal, about as big as your fist, was there, and as I grabbed the grab iron I stepped on this piece of coal and the engine gave an unusual jerk and that threw me and my knee struck on the cross-ties" (R., p. 21). On cross-examination respondent swore that the jerk was the usual jerk for men on board the train; that to a certain extent the running in and out of the slack between the cars caused jerks and lurches; that he was acquainted with the effect of slack in the running of trains (R., pp. 26-30).

5. At the close of the case in chief for respondent, respondent being the only witness in his behalf, petitioner moved the court to exclude the evidence on the second count of the declaration and direct the jury to find for petitioner. This motion was overruled and exception duly noted. Similar motions on the first and third counts were sustained (R., p. 41).

6. The conductor testified that in the train on which respondent was working was a car moving from Philadelphia, Miss., to Holliday, Tex. (R., pp. 48-49); that

he and the flagman were in the caboose at the time of the accident (R., p. 49); that there was nothing in the way of an unusual jerk or lurch observed by him (R., p. 49); that when he saw that respondent had fallen he stopped the train by means of an appliance in the caboose; that jerks and lurches are caused by the slack between cars caused by springs behind the drawheads or couplers; that this is the standard construction, and that the train at the time of the accident was equipped with the best known equipment and was in good condition (R., p. 50).

The flagman swore that at the time of the accident he was sweeping out the caboose; that he was standing; that there was no unusual movement of the train or lurch observed by him; that the jerks in a moving train are caused by slack (R., pp. 68-71).

The fireman swore that he received respondent's signal to go ahead; that he left his seat and went to the deck of the locomotive to fire it; that he did not know that respondent was not on board; that the engineer did nothing in the operation of the locomotive to cause the jerk or jar (R., pp. 65-66).

The engineer testified that he did not know that the respondent was not on board; that he did nothing in the operation of the locomotive to cause a jerk or lurch (R., pp. 62-63).

The head brakeman testified that after pulling out he got upon the engine and that nothing was done by the engineer to cause a lurch or jerk; that he did not know respondent was not on board (R., pp. 67-68).

This is the testimony on the feature of negligence.

7. At the close of the case petitioner requested the trial court to direct the jury to find for defendant; that this request was refused. The refusal of this instruction was a denial to petitioner of a right, privilege, or immunity granted by the laws of the United States and was a denial of the protection guaranteed petitioner under and by virtue of the statutes of the United States.

8. Petitioner requested of the trial court the following instruction:

> "The court instructs the jury for the defendant that if you believe from the evidence that the crew of the engine did not know that the plaintiff was not abroad the train, it is your sworn duty to find for the defendant, even though you may believe that an unusual lurch was given the train" (R., p. 14).

This instruction was refused by the court and the action of the court was erroneous. The refusal was a denial to petitioner of the protection guaranteed it by the laws of the United States, and it was the denial of a right given petitioner by the laws of the United States.

9. Petitioner requested of the trial court the following instruction:

> "The court instructs the jury that even though you may believe from the evidence that there was an unusual lurch, still if said lurch was occasioned by the slack between cars running in or out, it is your sworn duty to find for defendant" (R., p. 14).

The refusal of this instruction was a denial to petitioner of the protection guaranteed by the laws of the United States and of a right granted by the laws of the United States.

10. Petitioner shows that the jury found for the respondent and assessed his damages at $2,000; that the court thereupon, on April 15, 1925, entered a judgment against petitioner in the sum of $2,000 and costs (R., pp. 14 & 15).

11. Petitioner shows that it thereupon entered a motion for a new trial, which was overruled by the trial court (R., p. 17).

12. Petitioner shows that it thereupon prosecuted on appeal to the Supreme Court of Mississippi; that on said appeal the errors of which complaint is here made were presented to the Supreme Court of Mississippi; that the Supreme Court of Mississippi, on January 25, 1925, affirmed the judgment of the trial court, and a judgment of affirmance was duly entered against petitioner (R., p. 73); that thereafter in conformity with the practice in the Supreme Court of Mississippi, petitioner filed a suggestion of error in the affirmance of the said judgment (R., p. 74); that on February 22, 1926, the Supreme Court of Mississippi overruled the suggestion of error and an order to that effect has been duly entered in said court (R., p. 79). Petitioner shows that the Supreme Court of Mississippi is the highest court in the State, and that petitioner has exhausted its remedies in that court; that to this Court

alone may petitioner appeal for the correction of the errors herein indicated.

13. Wherefore your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Court, direct to the Supreme Court of Mississippi, commanding said court to certify and send to this Court, on a day certain to be therein named, the full and complete transcript of the record and all proceedings of said Supreme Court of the State of Mississippi in said case entitled, *Gulf, Mobile and Northern Railroad Company, appellant, vs. W. F. Wells, appellee*, No. 25302 on the docket of that court, to the end that said case may be reviewed and determined by this Court, as provided by section 237 of the Judicial Code, or that your petitioner may have such other or further relief or remedy in the premises as this Honorable Court may deem appropriate and in conformity with the said provision of the Judicial Code, and that said judgment of said Supreme Court of the State of Mississippi in said case, and every part thereof, may be reversed by this Honorable Court.

GULF, MOBILE AND NORTHERN
RAILROAD COMPANY,
By ELLIS B. COOPER,
Attorney.

STATE OF MISSISSIPPI,
County of Jones,
City of Laurel:

This day personally appeared before me, a notary public in and for said city, county, and State, I being an officer authorized by the laws of the State of Mississippi to administer oaths, Ellis B. Cooper, who, after being duly sworn, says on oath that he is the attorney for the Gulf, Mobile and Northern Railroad Company, and that he is authorized to, and does, make this affidavit on behalf of that company; that the matters and things stated in the foregoing petition are true and correct as stated, as far as he is advised and believes, and that said petition, in his opinion, ought to be sustained.

ELLIS B. COOPER.

Given under my hand and official seal this the 4th day of March, 1926.

[SEAL.]

MARY L. LEWIS,
Notary Public.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The petition for writ of certiorari seeks to have this Court review the action of the court in this cause wherein the Supreme Court of Mississippi affirmed a judgment against petitioner in the sum of $2,000. Petitioner pleaded and proved that petitioner and respondent at the time of the accident were engaged in interstate commerce. Petitioner asserted rights under Federal statutes, being the Federal Employers' Liability Act of April 22, 1908, as amended April 5, 1910. These rights were denied petitioner by the trial court and on appeal the Supreme Court of Mississippi, without opinion, affirmed the judgment.

Statement of Pleadings.

Respondent filed a declaration against petitioner charging it with negligence. The declaration in each count charging that respondent was employed as a brakeman on the trains of petitioner. He charges that on June 2, 1924, he was a brakeman on a local freight, and that while so employed he was injured.

In the first count it is alleged that a lump of coal as big as the fist was negligently left on or near the track and that this was a violation of petitioner's duty to furnish respondent a reasonably safe place in which to work. He charges that in attempting to board the train he stepped upon the coal, which caused him to fall.

In the second count it is alleged that as respondent attempted to board the train he stepped on the coal and the engineer gave the train a sudden and unnecessary jerk, which caused respondent to fall and which resulted in the injury sued for.

In the third count it is alleged that the operation of a train within a municipality at a rate of speed greater than six miles per hour was the proximate cause of the injury.

Petitioner pleaded the general issue of not guilty and gave notice that petitioner and respondent at the time of the injury were engaged in interstate commerce.

Statement of Facts.

The facts disclose that respondent was engaged in the performance of his duties as brakeman on a train of petitioner. It is apparent that this train was engaged at the time in interstate commerce, one of the cars of the train having originated at Philadelphia, Miss., destined to Holliday, Tex.

When the station of Stratton, Miss., was reached certain switching was done and respondent assisted in these operations. After the completion of this work, respondent was on the left-hand side of the train at or near the caboose. This is the side on which is the seat of the fireman in the cab of the locomotive. It is, of course, opposite from the side of the engineer.

When the work was completed respondent "highballed" the fireman in the locomotive, meaning by this

that all was ready for departure. The fireman received this signal and left his seat to fire the locomotive.

At this time the conductor directed respondent to throw a derail on an adjoining track. Respondent threw the derail and returned to catch the train. Between the time of his departure and his attempt to board the train it had moved about 50 feet.

As respondent endeavored to catch the train he fell and sustained an injury. The extent of the injury was disputed.

There was no proof that petitioner knew or had reason to know that the lump of coal was at or near the track. In the absence of this proof the trial court directed a verdict for petitioner as to liability under the first count.

The Supreme Court of Mississippi has ruled that the statute fixing the maximum rate of speed at which trains may be operated in a municipality does not apply in suits brought by employees engaged on the train; and, again, the record does not show Stratton, Miss., to be incorporated. The trial court for these reasons directed a verdict for petitioner as to liability under the third count of the declaration. The case was tried on the second count and the judgment is based thereon.

Instructions of the Court.

1. Petitioner requested on the trial at the close of the case the following instruction:

> "The court instructs the jury to find for defendant" (R., p. 14).

This instruction was refused and its refusal assigned as error.

2. Petitioner requested on the trial the following instruction:

> "The court instructs the jury that even though you may believe from the evidence that there was an unusual lurch, still if said lurch was occasioned by the slack between cars running in or out, it is your sworn duty to find for defendant" (R., p. 14).

This instruction was refused and its refusal assigned as error.

3. Petitioner requested on the trial the following instruction:

> "The court instructs the jury for the defendant that if you believe from the evidence that the crew of the engine did not know that the plaintiff was not aboard the train, it is your sworn duty to find for the defendant, even though you may believe that an unusual lurch was given the train" (R., p. 14).

This instruction was refused and its refusal was assigned as error.

ARGUMENT.

It was, and is, the contention of the petitioner that the evidence failed to disclose any negligence on the part of petitioner or its employees. The act of negli-

gence alleged was "that the engineer gave a sudden and unnecessary lurch of the train," which threw respondent and caused the injury. That negligence must be proven is the undisputed rule of this Court in actions based on, or brought under, the Federal Employers' Liability Act. Railroad Co. *vs.* Horton, 233 U. S., 492; 57 L. Ed., 1062; Railroad Co. *vs.* Wagner, 241 U. S., 476; 60 L. Ed., 1110.

Petitioner's contention that no negligence is shown finds support in two propositions, viz:

> 1. That the declaration charges that the engineer gave a very sudden and very unnecessary jerk of the train. Petitioner submits that the record does in no way support this charge.
>
> 2. That according to the testimony of the respondent the jerk was usual, and not unusual, for men on board, but that is was unusual for men on the ground about to board the train. Petitioner submits that if such be true that, even if it be considered that the engineer in the operation of the train caused the jerk, there was no negligence shown unless it be shown that the engineer knew or had reason to believe that the respondent was not on board and was about to board the train.

No Evidence that Engineer Caused the Jerk.

Respondent swears that as he caught the grab-iron the engine gave an unusual jerk. Respondent further swears that he was ten cars away from the locomo-

tive. He swears that to throw the derail he went several feet from the train. He swears that as he reached the train he had his eyes and mind on where he was going, and that he was watching the way he was going. Respondent swears that he was on that side of the train opposite to that on which the engineer sat. At this distance from the locomotive respondent could not swear as to the cause of the jerk. Certainly he could not swear the engineer caused it.

The engineer, the fireman, and the head brakeman swear that nothing was done by the engineer in the operation of the locomotive to cause the jerk.

There is no contradiction or impeachment in any way of the testimony of these employees. Respondent does not attempt to deny that they speak the truth.

If there is in the record any dispute as to this, it comes from the very uncertain inference from respondent's statement that the engine gave a jerk. Respondent, however, admits that he was ten cars away and watching the point where he was to board.

But respondent admits that slack will cause jerks or lurches. All of the witnesses testify to this effect. The engineer swears, and he is not contradicted, that an engineer cannot by any operation of the locomotive while moving cause a jerk or lurch.

It is shown without dispute that slack is in all trains; that it is in all trains of the best construction. In other words, slack is in all trains and due to the springs behind each drawhead or coupler.

Petitioner respectfully submits that this proof utterly fails to show any negligence on the part of

petitioner or any employees. There was a jerk, we must concede in the face of the jury's verdict. That it was not caused by the act of any employee is undisputed. That slack could have caused it is admitted on all sides. In view, therefore, of this evidence, petitioner respectfully submits that the operation of the slack in the train caused the jerk; and it appearing that slack is a condition found in all trains of standard construction in good condition, no negligence is proven and certainly not the negligence charged, viz., the negligence of the engineer.

The Supreme Court of Alabama in the case of Southern Railway Co. vs. Dickson, 211 Ala., 481; 100 So., 667, in a case based upon the Federal Employers' Liability Act, said:

> "Counsel's insistence is that, conceding the fact of the jerk or jar, the evidence shows that it might have been the result of any one of four distinct agencies: (1) The jamming of the air; (2) the sticking of the brakes; (3) the rolling up of the slack (there being 49 cars), or (4) the act of the engineer, and that, as to any causative action by the engineer, the affirmative conclusion required could not be grounded on anything more than conjecture. As this Court has often declared, findings of fact based on conjecture merely cannot be upheld. As said in Southworth, Adm'x, vs. Shay:
>
> "'Proof which goes no further than to show an injury could have occurred in an alleged way, does not warrant the conclusion that it did so occur, where from the same proof the injury

can with equal probability be attributed to some other cause.'

"But a nice discrimination must be exercised in the application of this principle. As a theory of causation, a conjecture is simply an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference. There may be two or more plausible explanations as to how an event happened or what produced it; yet, if the evidence is without selective application to any one of them, they remain conjectures only. On the other hand, if there is evidence which points to any one theory of causation, indicating a logical sequence of cause and effect, then there is a judicial basis for such a determination, notwithstanding the existence of other plausible evidence."

Petitioner submits that the record here shows without dispute that no act of an employee caused the jerk. On the other hand, the evidence points unmistakably to slack as the cause.

Conceding for the Argument that Engineer Caused Jerk, There is no Proof of Negligence.

Respondent testified that the jerk was unusual. He does not say it was violent or unnecessary. The statement of the nature of a jerk is a matter of opinion. When pressed on this point on cross-examination the following colloquy occurred:

"Q. Did you say it was the usual jerk for men who were on board?

"A. I said it was the usual jerk.

"Q. Did you on the other trial?
"A. Yes."

It thus appears that the jerk was usual for men on board but unusual for men situated as was respondent, who was about to board the train. This leaves out of consideration that the flagman, who while standing was sweeping out the caboose, was not disturbed by the jerk and no other employee noticed it.

Petitioner submits that if, as respondent says, the jerk was "usual" for men on board, but unusual for men on the ground and about to board, that, if it be conceded that the engineer caused the jerk, the jerk was not a negligent one unless the engineer knew, or had reason to believe, that respondent was on the ground. The jerk was negligent only to one on the ground. It was not negligent in itself.

The Supreme Court of Alabama in the Dickson case, *supra*, was confronted with a case of a violent, unusual, and extraordinary jerk. It there said:

> "Our cases very clearly support the proposition that, when the act which caused the injury is specified, and is not negligent in itself, but only when the actor was chargeable with knowledge that some one was in a position of peril with respect to consequences, no breach of duty is shown without an allegation that the actor had such knowledge or was so chargeable."

And the Supreme Court of Mississippi, in the case of Austin *vs.* Railroad Company, 134 Miss., 226; 99 So., 3, said:

"Engineer on engine pushing six flat cars, who without signal applied emergency brakes, and brought the train to a sudden stop on signal from conductor, when a cow made an effort to cross in front of the train, and who thereby caused a switchman riding on the front end of the front car to be precipitated over the end of the car held not negligent in the absence of evidence that he knew that the switchman was in a position of peril, or that he should or could have given a signal."

And the Circuit Court of Appeals for the Fourth Circuit, in the case of Davis vs. Shirer, 288 Fed., 293, said:

"There remains the allegation that there was negligence in so managing the train as to cause the unusual jar. To whatever degree it was out of the common, it does not appear to have been sufficiently great to injure any of the passengers in the car. Several of the witnesses who have testified apparently were on their feet at the time it occurred, and only one complained of having lost his balance in consequence. Had the engineer any reason to anticipate that the deceased would be trying to get upon one of the cars at that time, and was he in consequence bound so to operate his train as to avoid the risk of jarring it at the moment that the decedent might be trying to get on it? It would seem that the engineer had the right to assume that the decedent was where the rule and the safety of everybody on his train required him to be, and that was somewhere not less than half a mile in the rear of his train or on his way to that point. It has been argued that the defendant may not rely upon the violation by

the deceased of this rule, because it was said it was not pleaded, and, even if it had been, this defense goes only to question of contributory negligence which does not bar the recovery. Neither contention is sound. Before any question of contributory negligence can become important, and before the defendant is called upon to make or allege any affirmative defense, the plaintiff must show that he was negligent in some manner of which the deceased had the right to complain. This, in our view, she has failed to do.

"Railroading is a dangerous occupation. A certain number of accidents will happen without the companies having fallen short of the highest care reasonably practicable."

Did the engineer know or have reason to know or believe that respondent was on the ground and about to board the train? The undisputed facts on this feature are these:

Respondent was on the fireman's side. Respondent signaled the fireman that he was ready to go. The fireman swears that after receiving this signal he left his seat and saw respondent no more. He did not know of his whereabouts. The engineer swears that he did not know that respondent was not on board. The head brakeman, who was riding on the locomotive, swears he did not know. These facts are undisputed.

Respondent, standing, as he was, by the caboose, gave the signal to move. The alleged jerk was given after the train had moved forward 50 feet. Clearly, from these undisputed facts, the engineer did not know that respondent was not on board and was trying to

board the train. On the other hand, the signal of respondent gave the assurance that he was ready and to move ahead.

The Supreme Court of Alabama, in the case of Railway Co. *vs.* Dickson, *supra*, thus announces the essentials of liability in a case of this character:

> "In order to recover in this case it was necessary for plaintiff to show: (1) That he was thrown from his position on top of the car by a jerk or jar; (2) that this jerk or jar was sudden, extraordinary, and of unusual violence; (3) that it was caused by the engineer in the operation of the train; (4) that it was not a necessary incident of such operation, and (5) that at the time of its causation the engineer knew, or had reasonable grounds for believing, that the plaintiff then occupied such a position on one of the cars that such movement would probably imperil his safety."

Applying this to the undisputed facts of this case, we have the following:

(1) Respondent was jerked off; (2) the jerk was simply unusual for one about to board; (3) it was not caused by the engineer in the operation of the train; (4) the jerk was a necessary incident to the operation of the train; (5) the engineer at the time of its causation did not know, nor did he have reasonable grounds for believing, that respondent occupied a position such that the jerk would imperil respondent's safety.

Petitioner respectfully submits that no negligence has been proven.

3.

Refusal to Charge Jury that if Slack Caused Lurch to Find for Petitioner.

The court refused to instruct the jury, as requested by petitioner, that if the lurch was occasioned by the slack between the cars running in or out the jury should find for petitioner.

The evidence shows without dispute that slack is in all trains of standard construction when in good condition. This being true, if an employee is injured by a jerk caused by such slack there is no negligence.

Petitioner was entitled to this instruction. Its application to the case and its soundness as a matter of law are beyond question.

4.

Refusal of Instruction that if Crew of Engine Did Not Know Respondent was Not Aboard to Find for Petitioner.

The court refused to instruct the jury that if the engine crew did not know that respondent was not aboard the train to find for petitioner.

The court did grant such an instruction as applicable to the entire train crew, but would not limit it to the crew of the engine.

The conductor, of course, knew that respondent was not aboard, and the record so discloses.

Respondent says that had he been aboard the jerk would not have been negligent. Petitioner has shown

that the undisputed proof discloses that respondent signaled the train ahead, and that no one in the locomotive knew that respondent was not on board.

The knowledge of the engineer is the essential element. But petitioner's request included the engine crew.

The case of Southern Railway Company *vs.* Dickson, *supra*, shows that it is the knowledge of the engineer that is material. Petitioner was, therefore, entitled to have the jury so instructed.

Petitioner respectfully submits that it was denied its rights under the statutes of the United States, and that a writ of certiorari should be granted as prayed for.

Respectfully submitted,

ELLIS B. COOPER.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

OCTOBER TERM, 1925.

In the Matter of the Petition of

GULF, MOBILE AND NORTHERN RAILROAD COMPANY

vs.

W. F. WELLS.

And now comes the petitioner herein, Gulf, Mobile and Northern Railroad Company, and moves the Court, upon a certified copy of the transcript of the record herein and upon the annexed petition, duly sworn to, for writ of certiorari, directed to the Supreme Court of the State of Mississippi, to bring before this Honorable Court the case of the Gulf, Mobile and Northern Railroad Company *vs.* W. F. Wells, recently decided by the Supreme Court of Mississippi, for such proceedings therein as to this Court may seem just, and for such other and further relief as the Court may deem the petitioner entitled.

ELLIS B. COOPER,
Attorney for Petitioner.